



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Whether Land in the Town of
Sparta, Monroe County and Owned by Ronald L.
and Mary K. Hanson Shall be Withdrawn as Forest
Cropland

Case No.: IH-01-04

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Department of Natural Resources on its own motion has investigated and requested a hearing to determine whether 40 acres of land located in the SENW S33, T17N, R04W, Town of Sparta, Monroe County, Wisconsin should continue as Forest Cropland under Wis. Stat. § 77.02.

The Department alleges that Ronald L. Hanson and Mary K. Hanson (the Hansons) erected a permanent residence on the SENW of section 33, and therefore such property is ineligible for continuance as forest cropland under Wis. Admin. Code § NR 46.07(1)(b). The Department further alleges that the subject parcel is not being held for the purpose of producing forest products as required under Wis. Stat. § 77.02(1) and Wis. Admin. Code § NR 46.06(1)(c). The Department therefore alleges that the designation of this land as Forest Cropland is subject to cancellation under Wis. Stat. § 77.10(1).

On April 17, 2001, the Department of Natural Resources filed a Request for Hearing with the Division of Hearings and Appeals.

Pursuant to due notice hearing was held on August 21, 2001, in Sparta, Wisconsin, Jeffrey D. Boldt, administrative law judge (the ALJ) presiding. The Hansons failed to appear. Pursuant to Wis. Admin. Code § NR 2.09(3)(c), the Division of Hearings and Appeals took testimony and now issues the Order set forth below.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Ronald and Mary Hanson
Route 1
P. O. Box 362
Sparta, WI 54656-0362

Wisconsin Department of Natural Resources, by

Attorney Edwina Kavanaugh
P. O. Box 7921

Madison, WI 53707-7921

FINDINGS OF FACT

1. The Department of Natural Resources on its own motion investigated and requested a hearing to determine whether 40 acres of land located in the SENW S33, T17N, R04W, Town of Sparta, Monroe County, Wisconsin should continue as Forest Cropland under Wis. Stat. § 77.02. A hearing was noticed for August 21, 2001. The respondents, Robert and Mary Hanson failed to appear.

2. Upon application for entry dated March 12, 1981, by owner Par Acres, Inc., the Department issued order No. FC 04923 on September 5, 1981, designating the described land as Forest Cropland effective for the year 1982 pursuant to Wis. Stat. § 77.02(3). The quarter quarter section subject to withdrawal is identified as follows:

Township 17 North, Range 4 West
Section 33 – SENW – 40.00 A

3. On April 1, 1993, Par Acres, Inc. entered into a land contract with Ronald L. Hanson and Mary K. Hanson (the Hansons), Route 1 Box 367A, Sparta, Wisconsin. The land contract made in plain to the Hansons that the property was restricted by the terms of the prior entry as forest cropland. Specifically, that no building or structure “of any type” should be “erected, located or maintained on the above described lands.” (Ex.4)

4. On November 13, 1996, the Department learned that a permanent residence had been built on the land rendering it land upon which a domicile was located. Paul Heimstead, a DNR forester inspected the subject parcel on that date, after receiving a report that timber had been harvested. Heimstead discovered significant jack pine cuttings on four different quarter quarter sections. Further, he identified that a house had been built on the SENW quarter of section 33. (Ex. 5)

5. Land on which a domicile is located is not eligible for continuation as forest cropland pursuant to Wis. Admin. Code § NR 46.07(1)(b). (Schilling)

6. By letters dated November 13, 1996 and December 2, 1996, the Department notified Ronald Hanson of the forest cropland violations, asked that the land be voluntarily withdrawn. On December 11, 1996, the DNR received from the Hansons a signed voluntary declaration of withdrawal under forest crop law dated December 5, 1996. (Ex. 7)

7. On December 18, 1996, the forester requested the Department’s Forest Tax Unit issue a withdrawal order, and on January 2, 1997, the Department acknowledged the declaration of withdrawal and informed the Hansons that the Department of Revenue would calculate the gross withdrawal tax due.

8. Invoices for withdrawal tax were sent on October 4, 1993 and September 23, 1997, but never paid. Further, the transfer of ownership and acceptance form was not filed according to Wis. Stat. § 77.10(1)(b).

9. The land contract was fulfilled and a warranty deed was issued to the Hansons for 122.4 acres on January 16, 1998. (Ex. 4) This included the SENW quarter of section 33. The Department subsequently received the warranty deed transferring ownership to the Hansons and the warranty deed correcting the legal description. (Schilling)

10. On June 17, 1997, the Hansons submitted a signed Acceptance of Transfer acknowledging that these lands would continue as Forest Croplands, and stating they intended to practice forestry on these lands. (Ex. 12) Accordingly in July 22, 1997, the Department issued a Notice of Transfer, Order No. T4923. (Ex. 13)

11. The record at hearing demonstrates that the Hansons erected a permanent residence on the SENW of Section 33. (See: Ex. 18)

12. As of the date of hearing, the withdrawal tax remains unpaid and no arrangements for payment have been made.

DISCUSSION

The Hansons failed to appear. Nonetheless, the DNR proved by a preponderance of credible evidence that the Hansons had erected a domicile on the subject parcel. There is no dispute that the house was built on lands subject to forest cropland limitations, as the Acceptance of Transfer by the Hansons acknowledges. The record also included an application to Monroe County for a zoning and occupancy permit signed by Mary Hanson and clearly identifying the SE ¼ of the NW ¼ of section 33 as the location of the residence. (Ex. 14) The withdrawal tax has not been paid nor have any arrangements for payment been made. Accordingly, the land identified as the SENW quarter of section 33 is no longer eligible for forest cropland designation and the parcel must be withdrawn.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and issue necessary Orders in cases relating to withdrawal of lands from the forest cropland program pursuant to Wis. Stat. §§ 227.43 and 72.10.

2. The lands described above were eligible for entry into the program at the time of entry pursuant to Wis. Stat. § 77.02.

3. Wis. Stat. § 77.10(1) provides that the Department of Natural Resources may at any time cause investigation to be made as to whether lands entered under the forest cropland law should continue to be so entered.

4. The permanent residence erected by the Hansons is a “domicile” within the meaning of Wis. Admin. Code § NR 46.02(4).

5. Land upon which a "domicile" is located is not eligible for continuation as forest cropland pursuant to Wis. Admin. Code § NR 46.07(1)(b). The parcel described above is no longer eligible to continue as forest cropland.

ORDER

Pursuant to the foregoing Findings of Fact, NOW IT IS HEREBY ORDERED that the lands described above and located in the SE quarter of the NW quarter of Section 33, T17N, Town of Sparta, owned by Ron L. and Mary K. Hanson is withdrawn from entry under the Forest Crop law.

IT IS FURTHER ORDERED that the tax due by the owner (as determined by the Wisconsin Department of Revenue) and interest thereon shall be paid to the Department of Natural Resources pursuant to Wis. Stat. § 77.10(1)(a).

IT IS FURTHER ORDERED that a copy hereof be transmitted forthwith by the DNR to the Wisconsin Department of Revenue, to the Clerk of the Town of Sparta, to the Register of Deeds of Monroe County and the Supervisor of Assessments of the property tax assessment district wherein the land is located.

Dated at Madison, Wisconsin on September 20, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Jeffrey D. Boldt
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48, and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.